IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.650 OF 2000

The Commissioner of Income Tax,
Mumbai City-XIII, Mumbai .. Petitioner

V/s

Mr.Rafique Abdul Hamid Kokani
alias Mohd.Rafique Abdul Hamid,
Room No.46, 4th fl., Habib Bldg.,
2nd Samuel St., Mumbai 400 003. .. Respondents

Mr.R.V.Desai, Senior Advocate with Ms S.V.Bharucha for the Petitioner.

Mr.K.Sivram with Mr.Ajay Singh i/by K.Gopal for the Respondents.

CORAM: S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 01.02.2005.

JUDGMENT: (Per S.Radhakrishnan J.)

1. The above Appeal pertain to assessment of block period 1985-86 to 1995-96. The following two substantial questions of law have been raised:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition on account of unexplained investment of Rs.2,81,67,910/-, on the ground that there was no evidence in support of such addition, when in fact the additions were made by the A.O. on the basis of the statements made by the assessee which are permissible in evidence under Sec.132(4) of the I.T.Act? "

"2. Whether on the facts and in the circumstances of the case the Tribunal was justified in deleting the addition of Rs.3 lacs on account of unexplained investment representing expenditure incurred on renovation of the house."

2. In the above, a search and seizure action was carried out by the Deputy Director of Income Tax (Investigation) Unit-I, Ahmedabad at Room No.206 in Hotel Agarwal, Shahibaug, Ahmedabad on 8.11.1995 and primary gold weighing 49 Kgs was found in the room occupied by the appellant along with one Shri.Salam M.Patel.

3. The Assessing Officer however, did not give credence to the version given by the appellant which was largely corroborated by the 10 passengers in question and he handed the value of the gold in question of about 49 Kgs. which was seized during the search at Rs.2,44,22,090/- as the unexplained investment of the appellant. As the appellant admitted to have been launched on similar trips on earlier occasions to Delhi and Ahmedabad, the AO came to the conclusion that the appellant was engaged in the business of smuggling gold and he made certain further additions as unexplained investment in gold made by the appellant in the earlier consignments. He also made an addition of Rs.3,00,000/- separately as the unexplained investment in the renovation of the house. This is how he has made the impugned total addition of Rs.5,25,90,000/- as per the following details:-

(a) Addition on account of value of gold

65 Kgs. Rs.3,05,50,000

(The July consignment at Delhi)

(b) Addition on account of November consignment gold

105 Kgs x Rs.4,700 = 5,22,90,000

Credit for the July consignment = 3,05,50,000 Rs.2,17,40,000

(c) Addition on account of unexplained investment on the renovation of house Rs. 3,00,000

Rs.5,25,90,000

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We may mention that the value of the 49 kgs. of gold seized from Room No.206 of Hotel Agarwal is included in the value of the November consignments of gold added at Rs.5,25,90,000/- in the above computation.

4. After appreciating the evidence on record the Tribunal has concluded in Paragraphs 11 and 12 as under:-

> "11. While we sustain, as mentioned above, the addition of Rs.2,44,22,090/-, we cannot say the same thing about the rest of the additions made by the AO. There is no evidence in support of those additions, except the admission by the appellant in the course of the depositions that he was involved in the receipt of some consignments of gold. He has only admitted that he was only an employee. The admission of the appellant cannot be accepted in part and rejected in part to the prejudice of the appellant without any other additional evidence connecting him with the possession of gold. The appellant has of course admitted that he handed over certain bills of the gold ornaments to different parties at Mumbai but no enquiries have been made with those parties by the AO and no material has been brought on record connecting the appellant with those alleged sales to the parties. In the circumstances, we are of the view that no other addition, except towards the value of the seized gold of 49 and odd kgs. can be made in the hands of the appellant. We accordingly delete all the other additions."
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> "12. The AO has made a separate addition of Rs.3,00,000/- towards unexplained investment in the renovation of house by the appellant. Compared to the addition of Rs.2,44,22,090/- which we have sustained, the unexplained investment is a pittance. We must hold that the investment is explained from the undisclosed income brought to tax. We accordingly delete the addition of Rs.3,00,000/- also."

5. Shri.Desai, the learned Senior Counsel for the Revenue sought to contend that the Tribunal had erred in deleting the above amount especially when the Assessee

had made statements before the Income Tax Authorities under Sec.132(4) of the Income Tax Act. Shri.Desai pointed out that the Respondent had made the following statements under Sec.132(4) of the Income Tax Act:-

> Question:- What work do you do at the place of Vali Muhammed at Samuel Street? Who else works and what job is done there?
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> Answer :- In the office of Vali Muhammed (91 Samuel Street, Room No.2nd Pala Gali), I work as an agent. I do the job of receiving passengers carrying Gold coming from Sharjah. For this purpose, I go to Ahmedabad or Delhi to receive the passengers coming from Sharjah and from there I go to Airports (Delhi or Ahmedabad) where passengers are handed over to me. Agent who accompanies the passenger and the passenger (along with) gold are handed over to Shri.Vali Muhammed in Bombay.
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> Question: You had gone to receive Delhi passengers. On which date and for how many passengers had you gone to receive? In which hotel did you stay?
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> Answer :- I had gone to Delhi to receive passengers 4-5 months back. Those passengers had come from Dubai. On one occasion six passengers had brought 30 kgs.of gold, second time seven passengers had brought 35 kgs.(5 kgs each) gold. They were brought from international airport to domestic airport, from there by a domestic flight they were brought to Bombay and were handed over to Shri.Vali Muhammed.

6. Shri.Desai, the learned Senior Counsel for the Petitioner also pointed out that though the Respondent is supposed to be employed by one Vali Muhammed, running a travel agency, the income tax authorities found neither Vali Muhammed nor any travel agency at the address given by the Respondent. Hence the learned Counsel submitted that the explanations of Respondent

are concocted and false. Hence the learned Senior Counsel Mr.Desai submitted that the Tribunal had erred in allowing the aforesaid deductions.

7. Shri. Shivram, the learned Advocate on behalf of the Respondent sought to justify the judgment and order of the Tribunal and contended that the Tribunal has rightly observed that the Respondent was only an employee. The learned Counsel also contended that the Respondent had only admitted that he had handed over certain bills of the gold ornaments to different parties at Mumbai. Shri.Shivram also contended that no enquiries were made with those parties by the Assessing Officer and that no material has been brought on record connecting the Respondent with those alleged sales to various parties.

8. Having heard both the learned Counsel and after perusal of the record, we find that the Respondent has clearly admitted to a number of trips to Delhi and of receiving gold from various passengers and handing over the same to Vali Mohammed. The Respondent could not point out the whereabouts of Vali Mohammed and even the address of the Travel agency turned out to be fictitious. Hence, without laying down any general proposition of law regarding the evidentiary value of the statements made under Sec.132(4) of the Income Tax Act, in the facts of the present case, we are of the opinion, that the statement of the assessee in so far as

it pertains to acquisition of gold at Delhi is cogent and the assessing officer was justified in making the additions on the basis of the statement of the assessee recorded under Section 132(4) of the Income Tax Act and the Tribunal was in error in not giving due weightage to the said statement. Hence we answer the Question No.1 in the negative i.e. in favour of the Revenue and against the Assessee.

9. As far as Question No.2 is concerned, admittedly the Respondent had unaccounted money which could be utilised for renovation and therefore, we are not inclined to interfere with the order of Tribunal deleting the addition of Rs.3 lacs. Accordingly, the Question No.2 is answered in the affirmative i.e. in favour of the Assessee and against the Revenue.

10. The above Appeal is disposed of in the above terms, however with no order as to costs.

(S.RADHAKRISHNAN,J.)

(J.P.DEVADHAR,J.)